

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

DELBERT E. HUDSON,

Plaintiff,

vs.

TYSON FRESH MEATS, INC.,

Defendant.

No. 12-CV-2079-LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 1

This is a civil case brought by the Plaintiff, Delbert Hudson, against the Defendant, Tyson Fresh Meats, Inc. Hudson alleges that during the course of his employment with Tyson, he developed health problems and needed to take medical leave. Hudson contends that Tyson's actions toward him violated the Family and Medical Leave Act. Tyson denies these claims and alleges that Hudson is not entitled to damages.

This statement has been given to you by the court solely to inform you, by way of summary, of the respective claims of the parties. Neither the claims made nor this instruction are to be considered by you as evidence in this case.

INSTRUCTION NO. 2

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 3

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

INSTRUCTION NO. 4

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NO. 5

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

You may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory or an intentional falsehood; that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 6

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 7

Certain testimony has been received into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given here in court.

INSTRUCTION NO. 8

During this trial, you have heard the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

INSTRUCTION NO. 9

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached."

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

INSTRUCTION NO. 10

The Family and Medical Leave Act (“FMLA”) entitles an employee to twelve weeks of unpaid leave during any twelve-month period if the employee has a serious health condition that makes the employee unable to perform the functions of the position of such employee. It is unlawful for any employer to interfere with, restrain or deny the exercise of or the attempt to exercise FMLA rights. An FMLA “entitlement” claim results when an employee claims the denial of a benefit to which he is entitled under the statute. An FMLA “discrimination” claim occurs when an employer takes adverse action against an employee because the employee exercises rights to which he is entitled under the FMLA. Hudson alleges entitlement and discrimination claims.

INSTRUCTION NO. 11

Your verdict must be for Hudson and against Tyson on Hudson's theory of "discrimination" if all of the following elements have been proved by the greater weight of the evidence:

First, Hudson had a serious health condition (as defined in Instruction No. 13); and

Second, Hudson was absent from work because of that serious health condition; and

Third, Hudson gave Tyson timely notice (as defined in Instruction No. 15) of his need to be absent from work; and

Fourth, as soon as practicable (as defined in Instruction No. 16), Hudson gave Tyson sufficient information so that Tyson knew or should have known that the absence was for a serious health condition; and

Fifth, Tyson discharged Hudson; and

Sixth, Hudson's absence from work was a determining factor in Tyson's decision to discharge Hudson.

However, your verdict must be for Tyson on this theory of recovery if any of the above elements has not been proved by the greater weight of the evidence.

You may find that Hudson's absence from work was a determining factor in Tyson's decision if it has been proved that Tyson's stated reasons for its decision are a pretext to hide discrimination.

INSTRUCTION NO. 12

Your verdict must be for Hudson and against Tyson on Hudson's theory of "entitlement" if all of the following elements have been proved by the greater weight of the evidence:

First, Hudson had a serious health condition (as defined in Instruction No. 13); and

Second, Hudson gave Tyson timely notice (as defined in Instruction No. 15) of his need to be absent from work; and

Third, as soon as practicable (as defined in Instruction No. 16), Hudson gave Tyson sufficient information so that Tyson knew or should have known that the absence was for a serious health condition; and

Fourth, Hudson was absent from work because of that serious health condition; and

Fifth, Hudson received treatment and was able to return to work and perform the functions of his job at the expiration of the leave period; and

Sixth, Tyson refused to reinstate Hudson to the same or an equivalent position (as defined in Instruction No. 18) held by Hudson when the absence began.

However, your verdict must be for Tyson on this theory of recovery if any of the above elements has not been proved by the greater weight of the evidence.

INSTRUCTION NO. 13

A “serious health condition” means an illness, injury, impairment or physical or mental condition that involves:

Incapacity plus treatment, which means a period of incapacity (inability to work, attend school or perform other regular daily activities) of more than three consecutive, full calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves:

- (1) In-person treatment two or more times by a health care provider (as defined in Instruction No. 14); or
- (2) In-person treatment by a health care provider (as defined in Instruction No. 14) on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider (as defined in Instruction No. 14).

INSTRUCTION NO. 14

As used in these instructions, the phrase “health care provider” includes doctor of medicine, doctor of osteopathy, podiatrist, dentist, clinical psychologist, optometrist, nurse practitioner, nurse-midwife or clinical social worker, so long as the provider is authorized to practice in the State and is performing within the scope of his or her practice.

INSTRUCTION NO. 15

The phrase “timely notice” as used in these instructions means that Hudson must have notified Tyson of his need for leave as soon as practicable after he learned of the need to take leave. Absent unusual circumstances, Hudson must comply with Tyson’s usual and customary notice requirements for requesting leave.

INSTRUCTION NO. 16

The phrase "as soon as practicable" as used in these instructions means as soon as possible and practical, taking into account all of the facts and circumstances of the individual case.

INSTRUCTION NO. 17

An employee shall provide sufficient information for an employer to reasonably determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job or that the employee is under the continuing care of a health care provider. When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA or even mention the FMLA. Calling in “sick” without providing more information is not sufficient notice to trigger an employer’s obligations under the FMLA. The employer is expected to obtain any additional required information through informal means. An employee has the obligation to respond to an employer’s questions designed to determine whether an absence is potentially FMLA-qualifying.

INSTRUCTION NO. 18

An “equivalent position” means a position that is virtually identical to the employee’s former position in terms of pay, benefits and working conditions, including privileges, perks and status. It must involve the same or substantially similar duties or responsibilities, which must entail substantially equivalent skill, effort, responsibility and authority.

INSTRUCTION NO. 19

The phrase “determining factor” as used in these instructions means that an employer would not have discharged the employee but for the employee’s absence due to a serious health condition; it does not require that his absence due to a serious health condition was the only reason for the employer’s decision.

INSTRUCTION NO. 20

You will have to decide whether certain facts have been proved by the greater weight of the evidence. A fact has been proved by the greater weight of the evidence if you find that it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable.

You have probably heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than “more likely true than not true.” It applies in criminal cases, but not in this civil case; so put it out of your mind.

INSTRUCTION NO. 21

You may not return a verdict for Hudson just because you might disagree with Tyson's actions or believe them to be harsh or unreasonable.

INSTRUCTION NO. 22

If you find in favor of Hudson, then you must award him the amount of any wages, salary, employment benefits and other compensation he would have earned in his employment with Tyson if he had not been discharged on January 10, 2012 through the date of your verdict, minus the amount of earnings and benefits from other employment received by Hudson during that time.

You are also instructed that Hudson has a duty under the law to “mitigate” his damages—that is, to exercise reasonable diligence under the circumstances to minimize his damages. Therefore, if it has been proved that Hudson failed to seek out or take advantage of an opportunity that was reasonably available to him, you must reduce his damages by the amount he reasonably could have avoided if he had sought out or taken advantage of such an opportunity.

Remember, throughout your deliberations, you must not engage in any speculation, guess or conjecture, and you must not award damages under this Instruction by way of punishment or through sympathy.

INSTRUCTION NO. 23

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 24

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement, if you can do this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

Each of you must come to your own decision, but only after you have considered all the evidence, discussed the evidence fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your mind if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach your verdict. Remember, you are not for or against any party. You are judges—judges of the facts. Your only job is to study the evidence and decide what is true.

Third, if you need to communicate with me during your deliberations, you may send a note to me, signed by one or more jurors. Give the note to the court security officer and I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Finally, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdict might be—that is entirely for you to decide.

INSTRUCTION NO. 25

Attached to these instructions you will find the Verdict Form. The Verdict Form is simply the written notice of the decisions that you reach in this case. The answers to the Verdict Form must be the unanimous decisions of the jury.

You will take the Verdict Form to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Form, your foreperson will fill out the Verdict Form, each juror will sign it, and your foreperson will date it and advise the Court Security Officer that you are ready to return to the courtroom. Your foreperson should place the signed Verdict Form in the blue folder, which the court will provide you, and then your foreperson should bring the blue folder when returning to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Form in accord with the evidence and these instructions.

August 15, 2015
Date

Linda R. Reade
Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa